

KEEGAN WERLIN LLP

ATTORNEYS AT LAW
265 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

March 27, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

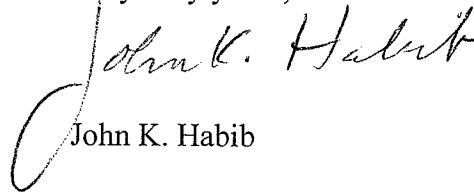
RE: NSTAR Gas Company 2006 Off-Peak Season Cost of Gas Adjustment,
D.T.E. 06-GAF-08

Dear Secretary Cottrell:

Please find attached a Motion for Protective Treatment of Confidential Information on behalf of NSTAR Gas Company (the "Company") in the above-referenced proceeding.

Please contact me or Kerry Britland (781-441-8219) at the Company if you have any questions regarding the filing.

Very truly yours,



John K. Habib

Enclosure

cc: Carol Pieper, Hearing Officer
Joseph Rogers, Assistant Attorney General
Colleen McConnell, Assistant Attorney General
George Yiankos
Robert Ruddock
Robert Sydney

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

NSTAR Gas Company

)
)
)
D.T.E. 06-GAF-O8

**MOTION OF NSTAR GAS COMPANY
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes NSTAR Gas Company (“NSTAR Gas” or the “Company”) and hereby requests the Department of Telecommunications and Energy (the “Department”) to grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D. The Company requests that the Department protect from public disclosure price terms in Section III of the Company’s March 16, 2006 request for approval of its 2006 Off-Peak Seasonal Cost of Gas Adjustment.¹ As discussed below, the price information in these exhibits is competitively sensitive and its release to the public would jeopardize the integrity of future negotiations between the Company’s customers and competitive suppliers, which would have an adverse impact on these parties.

I. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.

¹ The Company filed redacted copies of these exhibits on March 16, 2006, deleting from those documents references to price data.

There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

. . . [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

In practice, the Department has often exercised its authority to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, are subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Company's request to protect pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

The Berkshire Gas Company et al., D.P.U 93-187/188/189/190, at 20 (1994).

II. BASIS FOR CONFIDENTIALITY

Section III of the Company's March 16, 2006 filing includes information regarding Non-Firm Transportation Activities of certain of the Company's customers. Specifically, Section III includes the volumes and rates associated with non-firm transportation agreements between customers and competitive gas suppliers. The Company seeks protection from public disclosure of these price terms because they are confidential, commercially sensitive and proprietary. The Company and certain of its customers are active participants in the gas-supply market and require confidential treatment of these price terms in order to protect bargaining latitude and negotiating leverage in the context of future agreements for non-firm transportation services.

Consistent with the Department's precedent, the Company is requesting confidential treatment for price terms only. Disclosure of the price terms has the potential to cause substantial harm to NSTAR Gas's customers, who may in the future negotiate

similar agreements with other participants in the Massachusetts gas market. Specifically, disclosure of the price terms may create a circumstance where NSTAR Gas's customers would be compelled to negotiate against the prices set forth in Section III in virtually every subsequent contract. Such an outcome would be contrary to the interests of the Company's customers in that disclosure of the pricing terms would potentially impede the Company's customers' ability to obtain similar or better prices from other suppliers in the future should it require additional non-firm transportation services.

In short, price terms must remain confidential to preserve the Company's customers' future negotiating leverage and its ability to function effectively in the gas supply marketplace. In addition, disclosure of contract price terms may dissuade gas suppliers, who must protect their competitive position in the national market, from marketing supplies in Massachusetts. Further, a lack of confidentiality may discourage suppliers from making concessions or agreeing to specific provisions more favorable to the buyer because public knowledge of such precedents would decrease the suppliers' bargaining leverage in other negotiations.

The harmful impact of price disclosures is well known to the Department. It has consistently held that price information is confidential and recognized that price information is competitively sensitive as set forth in the statute. See Colonial Gas Company, D.P.U. 96-18, at 4 (1996). Indeed, the Department has recognized the gas industry's concerns regarding disclosure of supply contract price terms. See The Berkshire Gas Company, D.P.U 93-187/188/189/190, at 20 (1994).

Consistent with the Department's directives in its March 7, 2006 Procedural Notice relating to this proceeding, the Company is requesting that the information in

Section III referenced herein be protected from public disclosure for a period of three years.

III. CONCLUSION

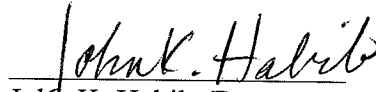
The Department has consistently held that price terms are considered to be confidential, commercially sensitive and proprietary. Disclosure on the public record of pricing information will negatively affect the Company's customers' future bargaining position and could have a negative effect on the marketplace by dissuading potential suppliers from competing in Massachusetts.

WHEREFORE, the Company respectfully requests that the Department grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

NSTAR GAS COMPANY

By its attorney,


John K. Habib, Esq.
Keegan Werlin LLP
265 Franklin Street
Boston, Massachusetts 02110
(617) 951-1400 (phone)
(617) 951-1354 (fax)

Dated: March 27, 2006